Bail Slip

The Appellants/ Accused 1 to 4 Viz 1. Maria susai @ Felix, 2. Kulandai @ Kulandairaj, 3. Guna @ Gunasegaran 4. Gopi @ Gopalan in SC No.6/97 on the file of the 2nd Additional Sessions Judge, Pondicherry were directed to be released on bail in and by the order of the Court dated 29.6.1998, made in Crl MP.No.3975/98 in CA No.762/97 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.12.2004

CORAM

THE HONOURABLE MRS. *JUSTICE R.BANUMATHI*

CRL.APPEAL No.762 of 1997

1. Maria Susai @ Felix
2. Kulandai @ Kulandairaj
3. Guna @ Gunasegaran ... Appellants /
4. Gopi @ Gopalan Accused 1 to 4.

Vs.

State of Pondicherry,
rep. By Inspector of Police,
Grand Bazar Circle, ... Respondent /
Pondicherry. Complainant

This Criminal Appeal arises out of the Judgment dated 29.08.1997 made in S.C.No.6 of 1997 on the file of II Additional Sessions Judge, Pondicherry.

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For Appellants : Mr. A.G.Rajan

For Respondent : Mr. A.P.Suryaprakash, and
E.Vijay Anand
Additional Public Prosecutor,
(Pondicherry)
(No arguments advanced)

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J U D G M E N T

Appellants are accused No.1 to 4 in S.C.No.6 of 1997 on the file of II Additional Sessions Judge, Pondicherry. For causing the murder of one Sundal Shanmugam alias Nattar, Appellants were convicted under S.304 (II) I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of Three Years each. For causing injuries to Witnesses Rajaram and Iyyappan, A.1 and A.2 were convicted under S.324 I.P.C. and sentenced to undergo Rigorous Imprisonment for a period of One Year each.

2. P.W.1 - Rajaram is the second husband of P.W.3 - Gnanavadivu. On 29.04.1995, P.W.1 - Rajaram was standing in front of his house in Kandoctor Thottam. At that time, A.1 to A.4 and two more accused armed with deadly weapons like Knives and Sticks came and abused P.W.2 - Umai alias Iyyappan. When the accused were coming near the house of P.W.3 - Gnanavadivu, P.W.2 was standing near his house just watching the accused. Accused asked P.W.2 to go away; but P.W.2 - Umai alias Iyyappan was still standing. Hence A.1 to A.4 caught hold of the Shirt of P.W.2 and A.2 caused cut injuries on the left Chin of P.W.2 with Aruval. P.W.3 - Gnanavadivu, mother of P.W.2 - Umai alias Iyyappan pleaded to leave her son. Because of the assault by A.2, P.W.2 sustained bleeding injuries on his head. A.1 asked P.W.1 as to why he was roaming hither and thither. So saying A.1 tried to attack P.W.1 with Long Knife near his Stomach. When suddenly moved, P.W.1 sustained bleeding injuries on his Stomach. At that time, one Sundal Shanmugam alias Nattar known to P.W.1 for more than twenty years had come nearby. On seeing him, all the accused persons shouted saying " Here comes Nattar, attack him ". So saying, all the accused ran towards him. A.2 twisted the leg of Sundal Shanmugam, who had fallen down. After he had fallen down, all the accused surrounded him and caused injuries with Knives and Sticks continuously all over the body. This occurrence was witnessed by the Nephews of Sundal Shanmugam viz., P.W.5 – Raja and P.W.6 – Selvam alias Palai, who were coming from behind Sundal Shanmugam at a distance of about 10 metres. That apart, P.W.4 – Suresh, a child aged about Ten Years had also witnessed the occurrence. After attacking the deceased, the accused had run away from the scene of occurrence.

3. *Registration of the case and Investigation:-* P.W.1 – Rajaram and P.W.2 – Iyappan alias Umai Iyyappan went to Odiensalai Police Station on the same day at 3.00 p.m. P.W.16 – then Sub Inspector of Police, Odiensalai has recorded the Oral Statement of P.W.1 and registered the case in Odiensalai Police Station Crime No.54 of 1995 under Ss.147, 148, 307 and 324 r/w 149 I.P.C. under Ex.P.47 – First Information Report. Injured P.Ws.1 and 2 were sent to

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General Hospital, Pondicherry for treatment.

4. P.W.16 – S.I. of Police had taken up the initial investigation. He came to know that injured Sundal Shanmugam succumbed to the injuries at 3.55 p.m. On receipt of Death Intimation, P.W.16 altered the case for the offences under Ss.147, 148, 302 and 324 r/w 149 I.P.C. under Ex.P.48 - Alteration Report.

5. P.W.17 – Inspector of Police, Grand Bazar Circle had taken up the further investigation. Scene of occurrence was inspected in the presence of the witnesses. Photographs (Exs.P.36 to P.38) were taken regarding the scene of occurrence. Exs.P.43 to P.46 – Photographs were also taken on the body of the deceased. On the scene of occurrence, Ex.P.2 – Observation Mahazar and Ex.P.49 – Rough Plan were prepared in the presence of P.W.7 – Ganesan and P.W.8 – Dhanagodi. Blood Stained portion of right hand finger (M.O.3) of deceased Sundal Shanmugam was seized under Ex.P.3 – Seizure Mahazar in the presence of P.Ws.7 and 8. Witnesses were examined.

6. On 30.04.1995, P.W.17 – I.O. examined the witnesses in the presence of Panchayatdars and held inquest on the body of deceased Sundal Shanmugam. Ex.P.51 is the Inquest Report. After inquest, the body was sent to Autopsy.

7. Pursuant to the Requisition from the Inspector of Police, P.W.12 – Dr.Balaraman has conducted Autopsy on the body of deceased Sundal Shanmugam. He has noted the following injuries on the body of deceased Sundal Shanmugam:-

(i) Multiple incised wound over left side of face. Scalp and neck exposing fractured bones of vault of skull and brain matter.

(ii) Vertically placed incised wound 9 X 3 cm cutting the ribs completely exposing thoracic cavity present over front of Chest 2 cm to the left of mid line.

(iii) Stab wound 4 X 2 cm and 3 X 1 cm over upper abdomen entering abdominal cavity.

(iv) Stab wound 2 X 1 cm and 2 X 2 cm over left side of abdomen entering abdominal cavity.

(v) Stab wound 5 X 2 cm entering thoracic cavity present below left axilla.

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(vi) Chop wound 10 X 3 cm cutting all metacavital bone over left hand.

(vii) Chop wound over all four fingers on right hand with amputation of right index finger completely.

Opining that the deceased died of Shock and Haemorrhage due to multiple injuries and that Injuries No.1 and 5 are vital in nature, P.W.12 had issued Ex.P.17 – Post-mortem Certificate. Ex.P.19 is the Final Opinion regarding the cause of death. After Post-mortem, wearing apparels of deceased (M.O.14 – Blood Stained T.C. Shirt, M.O.15 – Blood Stained T.C. Half Pant and M.O.16 – Blood Stained Dhoti) were handed over to P.W.14 – Muthusamy, Head Constable by P.W.12 and the same was seized under cover Mahazar (Ex.P.32) in the presence of witnesses Subbarayan and Alfer.

8. Injured P.Ws.1 and 2 were sent to Government Hospital, Pondicherry for treatment. On 29.04.1995, P.W.11 – Dr.Ilangovan has examined P.W.2 – Iyyappan at 5.10 p.m. He has noted one cut injury on the parietal region of head and issued Ex.P.15 – Wound Certificate opining that the injury is simple in nature. On the same day at 5.20 p.m., P.W.11 has examined P.W.1 – Rajaram and found a long liner abrasion over the front of the abdomen extending from left hypochondrium to right hypochondrium and an abrasion on the right thumb. The injuries were found to be simple in nature. Ex.P.16 is the Wound Certificate relating to P.W.1.

9. A.2 to A.5 were arrested on 04.05.1995 and were brought to Odiensalai Police Station. In the presence of P.W.9 – Moorthy and one Jayabal, A.2 to A.5 were interrogated, who gave Statements confessing to their guilt. Pursuant to the Confession Statements of A.4 and A.5, M.O.4 – Veechu Aruval, M.O.5 – Blood Stained Shirt and M.O.6 – Casurina Stick were recovered under Ex.P.8 – Seizure Mahazar. Pursuant to the Confession Statement of A.2, M.O.7 – Veechu Aruval and M.O.8 – Blood Stained T. Shirt were recovered under Ex.P.9 – Seizure Mahazar and pursuant to the Confession Statement of A.3, M.O.9 – Aruval and M.O.10 – Blood Stained T. Shirt were recovered under Ex.P.10 – Seizure Mahazar. A.2 to A.5 were remanded to Judicial Custody on 05.05.1995. A.1 was arrested on 06.05.1995. He was interrogated in the presence of P.W.10 – Palani and one Elumalai. A.1 had voluntarily given Confession Statement which led to the recovery of M.O.11 – Aruval and M.O.12 – T.C. Shirt from inside his house, which was seized under Ex.P.13 – Seizure Mahazar. Thereafter A.1 was remanded to Judicial Custody.

10. P.W.17 – I.O. gave Requisition for holding the Test Identification Parade for identification of the

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accused by P.Ws.1 to 6. Regarding A.1 to A.5, Test Identification Parade was held on 12.05.1995 by P.W.13 – Sub Divisional Judicial Magistrate, Pondicherry. The witnesses have correctly identified the accused 1 to 5 as assailants. Ex.P.29 is the Test Identification Parade Report for identification of A.1 to A.5. On completion of all formalities of investigation, Charge Sheet was filed against the accused under Ss.148, 324 and 302 r/w 149 I.P.C.

11. To substantiate the Charge against the accused, prosecution has examined P.Ws.1 to 18. Exs.P.1 to P.53 were marked. M.Os.1 to 16 were produced. The accused were questioned under S.313 Crl.P.C. about the incriminating evidence and circumstances. Denying all of them, the accused had stated that a false case has been foisted against them. Specifically denying the arrest, the accused had stated that they have been taken to custody from their houses even on 30.04.1995 and later remanded on 07.05.1995 on false accusation.

12. In consideration of the evidence, the learned Sessions Judge, Pondicherry has found that P.Ws.1 and 2 are injured witnesses and that their evidence cannot be disbelieved. Pointing out that the occurrence and the attack on deceased Sundal Shanmugal are clearly brought out by the evidence of P.Ws.1 and 3 to 6, the learned Sessions Judge found A.1 to A.4 responsible for committing the murder of deceased Sundal Shanmugam. Finding that Veechu Aruval was recovered only at the instance of A.4, learned Sessions Judge has acquitted the co-accused / A.5. The learned Sessions has pointed out certain discrepancies in the arrest and seizure of the weapons.

13. Assailing conviction, Appellants / A.1 to A.4 have preferred this appeal. Attacking the prosecution case, learned counsel for the Appellant / A.1 to A.4 has contended that the prosecution has not proved any motive for the brutal attack on the deceased Sundal Shanmugam. Drawing the attention of the Court to the evidence of P.W.2 – Dumb Witness Iyyappan, learned counsel has further submitted that P.W.2 being a Dumb witness, has confined his evidence regarding the attack on his person and has not spoken anything about the attack on the deceased. It is further contended that P.W.4 – Child witness, who speaks about the attack on the deceased has not spoken about the other part of occurrence. Arrest and recovery are also attacked on the infirmities pointed out by the learned Sessions Judge. Submitting that the case of prosecution has not been established beyond reasonable doubt, learned counsel prays for setting aside the conviction.

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14. On 01.12.2004, at request of the learned

counsel for the Appellants / A.1 to A.4, case was adjourned to 06.12.2004. On 06.12.2004, arguments of the Appellants heard. At request of the Additional Public Prosecutor, Pondicherry, the appeal was adjourned to 07.12.2004. On 07.12.2004 also, the Additional Public Prosecutor, Pondicherry was not present. He was only represented by his Junior Counsel Mr.E.Vijay Anand, who has only sought for adjournment. Since appeal is of the year 1997, there is no justification for any further adjournment. Declining further adjournment, the appeal was taken up for disposal in consideration of the arguments of the Appellants / A.1 to A.4 and the materials on record.

15. In consideration of the submissions by both sides, Judgment of the trial Court, evidence and other materials on record, the point that arises for consideration in this appeal is:- Whether appreciation of evidence by the trial Court suffers from any infirmity and whether the conviction of the Appellants / A.1 to A.4 suffers from any infirmity warranting interference ?

16. In the occurrence, P.Ws.1 - Rajaram and P.W.2 - Dumb witness Iyyappan were also injured. P.W.2 was attacked on his head with knife. When P.W.1 came, A.1 tried to attack P.W.1 with Long Knife, which caused injuries to the Abdomen of P.W.1. At that time, on seeing Sundal Shanmugam alias Nattar all the accused persons saying "nla; ,njh nghwhz;lh ehl;lhsp mtid btl;o bfhiy bra;a[';flh" surrounded him and attacked him with Knives and Sticks causing injuries all over the body. The occurrence was witnessed by P.W.2 - Iyyappan, P.W.3 - Gnanavadivu, P.W.4 - Suresh (Child Witness) and P.W.5 - Raja and P.W.6 - Selvam alias Palani, who are Nephews of deceased Sundal Shanmugam.

17. P.Ws.1 and 2 have spoken about the injuries sustained by them alone. P.W.2 - Dumb witness Iyyappan does not speak about the injury sustained by P.W.1 nor about the attack on deceased Sundal Shanmugam. Case of prosecution is mainly assailed on the ground that P.W.2 has not spoken anything about the attack on the deceased. We may shortly advert to the objection raised regarding the credibility of P.W.2. Case of prosecution mainly revolves around the evidence of Injured Witnesses - P.Ws.1 and 2; that they have been injured in the occurrence is well proved by their oral testimony and by the Medical Evidence.

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18. P.W.11 – Dr.Ilangovan, who has examined them. On the person of P.W.1 – Rajaram, P.W.11 has noted:- A long linear abrasion over the front of the abdomen extending from the left hypochondrium to the right hypochondrium and an abrasion on the right thumb and issued Ex.P.16 – Wound Certificate. P.W.2 – Dumb Witness Iyyappan was also medically examined by P.W.11, who issued Ex.P.15 – Wound Certificate noting a cut injury on the parietal region of the head. Injuries on P.Ws.1 and 2 were found to be simple in nature. P.Ws.1 and 2 are Injured Witnesses. Their evidence stands very much on higher footing, entitled to great weight. Very cogent and convincing grounds are required to discard the evidence of such Injured Witnesses. On appreciation of the evidence, no reasonable grounds are forthcoming for doubting the version of Injured Witnesses – P.Ws.1 and 2.

19. Case of prosecution and the attack on deceased Sundal Shanmugam are further strengthened by the oral evidence of P.W.3 – Gananvadivu, P.W.4 (Suresh) – Child Witness and P.W.5 – Raja and P.W.6 – Selvam alias Palani, who are the nephews of deceased Sundal Shanmugam. P.W.4 – Child Witness then studying in III Standard, residing at the place of occurrence – Kandoctor Thottam has clearly spoken about the occurrence and the attack on deceased. He has also identified all the accused in the Court strengthening his identification of the accused in the Test Identification Parade. P.Ws.5 and 6 were following the deceased Sundal Shanmugam at about 10 metres in Kandoctor Thottam and have witnessed the occurrence – that the accused surrounding Sundal Shanmugam and vigorously attacking him with weapons.

20. The deceased had been violently attacked and sustained many stab injuries and Chop Wound as noted above in Para (7). It is contended that no motive has been suggested and without any motive, it is highly improbable that the accused would have attacked the deceased Sundal Shanmugam. This contention does not merit acceptance. Motive for committing murder is generally a difficult area for the prosecution. One cannot normally look into the mind of other persons. Mere fact that the prosecution is not able to suggest the motive and bring evidence to that effect does not materially affect the prosecution case and the occurrence.

21. P.W.2 – Dumb Witness Iyyappan confined his evidence to his attack only to the extent of saying that A.1 (Felix) and A.4 (Gopi) caught hold of him and beat him

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on the left Chin. Thus P.W.2 confined his evidence only to the extent of his attack alone. Credibility of P.W.2 is attacked on the ground that he has not spoken about the attack on P.W.1 nor the attack on deceased Sundal Shanmugam. P.W.2, a Dumb Witness being impaired in his speech. Recalling of the incident depends on the memory of the individual. The power of repetition of an incident depends upon the memory of the individuals. Even for a normal person, it would be difficult to recall the entire occurrence. While so, it would be unrealistic to expect a Dumb Witness to recall the entire occurrence replaying his mind.

22. P.W.4 (Suresh) - Child Witness, aged Ten Years was studying in III Standard. During trial, some initial questions were put to him to ascertain whether he is in the position to discern Truth and Falsehood. After satisfying himself, the learned Sessions Judge has examined him on Oath. P.W.4 has clearly stated that A.2 has stated that they would not leave him (Sundal Shanmugam) anywhere he went and by so saying all the accused surrounded the deceased and attacked him with weapons like Knives and Long Knives. Out of the Six accused, P.W.4 has identified A.1 and A.3. Evidence of P.W.4 is attacked on the ground that he is a Child Witness and has been tutored. His evidence is further attacked on the ground that he has not spoken about the earlier occurrence. Being a Child Witness, P.W.4 - Suresh has confined his evidence only to that part of the evidence which his mind could recall. Merely because he has not spoken about the attack on P.Ws.1 and 2, evidence of P.W.4 cannot be doubted.

23. A.2 to A.4 were arrested on 04.05.1995 and A.1 was arrested on 06.05.1995. Pursuant to the Requisition from the Inspector of Police, P.W.13 - Sub Divisional Judicial Magistrate, Pondicherry has conducted Identification Parade on 12.05.1995. In the Test Identification Parade, P.Ws.1 to 6 have identified A.1 to A.4. Identification of all the accused in the Court by P.Ws.1 to 6 is well strengthened by the substantive evidence regarding the identification of the accused by P.Ws.1 to 6 in the earlier Test Identification Parade conducted by P.W.13. P.W.13 - Sub Divisional Judicial Magistrate, Pondicherry has spoken about the precaution measures adopted by him prior to the Test Identification Parade. The manner in which Identification Parade was held clearly shows that the Identification Parade was held in all fairness to the accused. There is no reason to doubt the evidence of P.W.13 and his Report Ex.P.30.

24. Evidence of prosecution is further strengthened by the Arrest of the accused, Confession and

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Recovery. A.2 to A.4 were arrested by P.W.17 – I.O. on 04.05.1995. Their Confession Statements in the presence of P.W.9 – Moorthi and one Jayabal led to the recovery of Aruvals, Sticks and Blood Stained Clothes from the respective places where they have been concealed. At the instance of A.2, M.O.7 – Veechu Aruval and M.O.8 – Blood Stained T.C. Shirt were seized; at the instance of A.3, M.O.9 – Aruval and M.O.10 – Blood Stained T.C. Shirt and at the instance of A.4 and A.5, M.O.4 – Veechu Aruval, M.O.5 – Blood Stained T.C. Shirt and M.O.6 – Casurina Stick were seized. A.1 was arrested on 06.05.1995. Based on his Confession Statement, M.O.11 – Aruval and M.O.12 – T.C. Shirt were seized under Ex.P.13 – Seizure Mahazar in the presence of P.W.10 – Palani and one Elumalai. Seized weapons have been proved to be the weapons of assault which is a strong incriminating circumstance in support of the prosecution case.

25. In the Judgment of the trial Court, in Para Nos.13 to 16, the learned Sessions Judge has pointed out certain defects in the manner of narrating the Arrest and Recovery by the witnesses viz., P.Ws.9 and 11. Pointing out the same, case of prosecution is very much attacked. It is the main contention that A.1 to A.4 were taken to Police Custody on the same day, i.e., on 29.04.1995 and that P.W.4 – Child Witness has also stated that he saw the accused in the Odiensalai Police Station on 30.04.1994. This contention has no merits. P.W.4 – Child Witness without knowing the implications might have stated in the Cross-examination about the presence of the accused in the Police Station. The answer elicited from P.W.4 during the Cross-examination would not in any way upset the Arrest of the accused and Recovery brought out by the evidence of P.Ws.9, 10 and 17.

26. Case of prosecution is well established by the evidence of Injured Witnesses – P.Ws.1 and 2; Eye Witnesses P.Ws.3 to 6. By perusal of Ex.P.17 – Post-mortem Certificate, it is seen that deceased Sundal Shanmugam was brutally attacked, who has sustained deep stab wounds and chop wounds; multiple incised wounds over left side of face, vertically and vertically placed incised wound cutting the ribs; Stab Wounds:- Over upper Abdomen, over left side of Abdomen and thoracic cavity below left axilla; Chop Wounds:- Over left hand and all four fingers on right hand. There was also amputation of Right Index Finger completely. Considering that the deceased Sundal Shanmugam was surrounded by all the accused and the manner of attack, this Court is of the view that it is a clear case of murder; that the learned Sessions Judge ought to have found the accused guilty for the offence under S.302 I.P.C. Since the State has not preferred any appeal, the matter has to be left at

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that. Suffice it to point out that the conviction of the Appellants / A.1 to A.4 under S.304 (II) I.P.C. for committing the murder of Sundal Shanmugam is to be maintained. Equally, the conviction of A.1 and A.2 under S.324 I.P.C. causing injuries to P.Ws.1 and 2 is to be confirmed.

27.In consideration of the manner of attack and the nature of injuries sustained by Sundal Shanmugal, the sentence of Rigorous Imprisonment of three years for the offence under S.304(II) I.P.C. is very low warranting no interference and the same is to be confirmed.

28. Therefore, the Judgment of the II Additional Sessions Judge, Pondicherry in S.C.No.6 of 1997 (dated: 29.08.1997) convicting the Appellants / A.1 to A.4 under S.304 (II) I.P.C. and the sentence of Imprisonment and convicting A.1 and A.2 under S.324 I.P.C. and the sentence of Imprisonment are confirmed and this appeal is dismissed.

29. The Trial Court is directed to take immediate steps for securing the Appellants / A.1 to A.4 to commit them to prison for serving the remaining period of sentence. The trial Court is also directed to comply with the above direction within three months and the compliance of the above direction may be intimated to this Court at once within the time stipulated.

Sbi

Sd/-
Asst. Registrar

/True copy/

Sub. Asst. Registrar

To

1. The II Additional Sessions Judge,
   Pondicherry.
(Directed to comply with above direction atonce within the time Stipulated under intimation to this Court will out fail)

2. -do- Thro' The Prl Sessions, Judge, Pondicherry

3. The Sessions Judge,

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Pondicherry.

4.The Judicial Magistrate, Pondicherry

5. -do- The Chief Judicial Magistrate, Pondicherry

6. The Superintendent, Central Prison,
Pondicherry.

7. The Inspector of Police,
Grand Bazar Circle,
Pondicherry.

8. The Senior Public Prosecutor for Pondicherry,
High Court, Madras. In Sr No.54140.

9.The Section officer, Crl Section, High Court,Madras
(To watch the report and to take further action in this matter)

Crl.A.No.762 of 1997

CP(CO)
Sr

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